IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9432 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI BANSIBHAI KAJOJIYA

Versus

COMMISSIONER OF POLICE

Appearance:

HL PATEL ADVOCATES for Petitioner

UR BHATT, AGP Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/12/2000

ORAL JUDGEMENT

1. The petitioner herein has challenged his detention order by way of the present petition under Article 226 of the Constitution passed by the Police Commissioner, Ahmedabad City, on 1st of August, 2000 in

exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short). The petitioner came to be detained on 1st July, 2000.

2. Detaining Authority has taken into consideration the investigation made in two crimes registered against the petitioner before Narayanpura Police Station and Shahibaug Police Station, Ahmedabad, under Sections 379, 399, 400, 401, 402 and 120 (B) of the IPc and under Section 25(1)(b)(a) of the Arms Act. Detaining authority has also considered the statements of two witnesses against the petitioner who on assurance of anonymity stated that the petitioner was headstrong and hardened criminal and was obstruction to public order. The detaining authority on this ground, passed the order impugned.

3. Learned Advocate Mr.R.B. Sharm for M/s H.L. Patel Associate for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. It was vehemently urged on behalf of the petitioner that the order in question is vitiated by non-application of mind on the part of detaining authority qua fact as well as legal position because at the time of passing of the order, the petitioner was under judicial custody for the offences registered against him and that the detaining authority wrongly considered the provisions of Sec. 437(5) of the Cr.P.C.

5. Having regard to the rival contentions it clearly appears that the detaining authority did not apply mind qua fact and the legal position both. The purpose of the PASA Act is to detain the person concerned behind the bar so as to prevent his illegal activities, which might be causing obstruction to public order. In the present case while passing of the order, the petitioner was in judicial custody in the crimes registered against him before the Narayanpura and Shahibaug Police Stations, which was registered against him on 25th June, 2000 and 7th July, 2000. The detaining authority has made a statement in the ground of detention that in both the offences, the petitioner was under custody while passing the order of detention against the petitioner. It necessary corroborates that right from 25th June, 2000 the petitioner was under judicial custody till the passing of the order i.e. on 1st of August, 2000. The detaining Authority failed to apply mind to this fact that the petitioner was not capable of continuing his

illegal or anti social activities as alleged. This obviously is non-application of mind qua the fact of the case. Further, the detaining authority has observed in the ground that the petitioner was likely to be released on bail and was likely to continue his illegal activities. The detaining authority further observed that since the procedure for the cancellation of bail was likely to consume more time, there was no other alternative except to pass the order under the PASA Act. The detaining authority did not apply mind qua legal position and in this respect, firstly, it was open for the detaining authority to oppose the bail application if at all filed on behalf of the petitioner, and secondly, in these circumstances, even without resorting to the proceedings for the cancellation of bail, the detaining authority anticipated that the proceedings was likely to take time. Therefore, it is non-application of mind towards the legal position. In this view of the matter, the order of detention passed is required to be quashed and set aside.

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 1st August, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Arvindbhai Bansibhai Kanojiya, is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair